

## § 1006.440

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(1) Issue a letter of warning advising the DHHL of the performance problem(s), describing the corrective actions that HUD believes should be taken, establishing a completion date for corrective actions, and notifying the DHHL that more serious actions may be taken if the performance problem(s) is not corrected or is repeated;

(2) Request the DHHL to submit progress schedules for completing activities or complying with the requirements of the Act and this part;

(3) Recommend that the DHHL suspend, discontinue, or not incur costs for the affected activity;

(4) Recommend that the DHHL redirect funds from affected activities to other eligible activities;

(5) Recommend that the DHHL reimburse its program account or line of credit under the Act in the amount improperly expended and reprogram the use of the funds; and

(6) Recommend that the DHHL obtain appropriate technical assistance using existing grant funds or other available resources to overcome the performance problem(s).

### § 1006.440 Remedies for noncompliance.

(a) *Remedies.* If HUD finds that the DHHL has failed to comply substantially with any provision of the Act or this part, the following actions may be taken by HUD:

(1) Terminate payments to the DHHL;

(2) Reduce payments to the DHHL by an amount equal to the amount not expended in accordance with the Act or this part;

(3) Limit the availability of payments to programs, projects, or activities not affected by such failure to comply; or

(4) Adjust, reduce or withdraw grant amounts or take other action as appropriate in accordance with reviews and audits.

(b) *Exception.* Grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the DHHL.

(c) HUD may, upon due notice, suspend payments at any time after the issuance of the opportunity for hearing

pending such hearing and final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(d) *Hearing requirement.* Before imposing remedies under this section, HUD will:

(1) Take at least one of the corrective or remedial actions specified under § 1006.430 and permit the DHHL to make an appropriate and timely response;

(2) Provide the DHHL with the opportunity for an informal consultation with HUD regarding the proposed action; and

(3) Provide DHHL with reasonable notice and opportunity for a hearing.

(e) *Continuance of actions.* If HUD takes an action under paragraph (a) of this section, the action will continue until HUD determines that the failure of the DHHL to comply with the provision has been remedied and the DHHL is in compliance with the provision.

(f) *Referral to the Attorney General.* In lieu of, or in addition to, any action HUD may take under paragraph (a) of this section, if HUD has reason to believe that the DHHL has failed to comply substantially with any provision of the Act or this part, HUD may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon receiving a referral, the Attorney General may bring a civil action in any United States district court of appropriate jurisdiction for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under the Act that was not expended in accordance with the Act or this part or for mandatory or injunctive relief.

## PART 1007—SECTION 184A LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING

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**Asst. Secy., for Public and Indian Housing, HUD**

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AUTHORITY: 12 U.S.C. 1715z-13b; 42 U.S.C. 3535(d).

SOURCE: 67 FR 40776, June 13, 2002, unless otherwise noted.

**§ 1007.1 Purpose.**

This part provides the requirements and procedures that apply to loan guarantees for Native Hawaiian Housing under section 184A of the Housing and Community Development Act of 1992. Section 184A permits HUD to guarantee an amount not to exceed 100 percent of the unpaid principal and interest that is due on an eligible loan. The purpose of section 184A and this part is to provide access to sources of private financing to Native Hawaiian families who otherwise could not acquire housing financing because of the unique legal status of the Hawaiian Home Lands or as a result of a lack of access to private financial markets.

**§ 1007.5 Definitions.**

The following definitions apply in this part:

*Department of Hawaiian Home Lands (DHHL)* means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 *et seq.*).

*Eligible entity* means a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and private nonprofit or private for-profit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

*Family* means one or more persons maintaining a household, and includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, or a single person.

*Guarantee Fund* means the Native Hawaiian Housing Loan Guarantee Fund under this part.

*Hawaiian Home Lands* means lands that:

(1) Have the status of Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or

(2) Are acquired pursuant to that Act.

*HUD* means the Department of Housing and Urban Development.

*Native Hawaiian* means any individual who is:

(1) A citizen of the United States; and

(2) A descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by:

(i) Genealogical records;

(ii) Verification by kupuna (elders) or kama'aina (long-term community residents); or

(iii) Birth records of the State of Hawaii.

*Native Hawaiian family* means a family with at least one member who is a Native Hawaiian.

*Office of Hawaiian Affairs* means the entity of that name established under the constitution of the State of Hawaii.

**§ 1007.10 Eligible borrowers.**

A loan guaranteed under this part may only be made to the following borrowers:

(a) A Native Hawaiian family;

(b) The Department of Hawaiian Home Lands;

(c) The Office of Hawaiian Affairs; or

(d) A private, nonprofit organization experienced in the planning and development of affordable housing for Native Hawaiians.

**§ 1007.15 Eligible uses.**

(a) *In general.* A loan guaranteed under this part may only be used to construct, acquire, or rehabilitate eligible housing.

(b) *Construction advances.* Advances made by the lender during construction are eligible if:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

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(2) The advances are made only as provided in the building loan agreement;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage bears interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

### § 1007.20 Eligible housing.

(a) A loan guaranteed under this part may only be made for one to four-family dwellings that are standard housing, in accordance with paragraph (b), of this section. The housing must be located on Hawaiian Home Lands for which a housing plan that provides for the use of loan guarantees under this part has been submitted and approved under part 1006 of this chapter.

(b) Standard housing must meet housing safety and quality standards that:

(1) Provide sufficient flexibility to permit the use of various designs and materials; and

(2) Require each dwelling unit to:

(i) Be decent, safe, sanitary, and modest in size and design;

(ii) Conform with applicable general construction standards for the region in which the housing is located;

(iii) Contain a plumbing system that:

(A) Uses a properly installed system of piping;

(B) Includes a kitchen sink and a partitioned bathroom with lavatory, toilet, and bath or shower; and

(C) Uses water supply, plumbing, and sewage disposal systems that conform to any minimum standards established by the applicable county or State;

(iv) Contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any appropriate county, State, or national code;

(v) Be not less than the size provided under the applicable locally adopted standards for size of dwelling units, ex-

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cept that HUD, upon request of the DHHL may waive the size requirements under this paragraph; and

(vi) Conform with the energy performance requirements for new construction established by HUD under section 526(a) of the National Housing Act (12 U.S.C.A. 1735f-4), unless HUD determines that the requirements are not applicable.

(c) The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, and R of this title and §§200.805 and 200.810 of this title apply to housing eligible for a loan guaranteed under this part.

(d) Housing that meets the minimum property standards for Section 247 mortgage insurance (12 U.S.C. 1715z-12) is deemed to meet the required housing safety and quality standards.

[67 FR 40776, June 13, 2002, as amended at 68 FR 66985, Nov. 28, 2003]

### § 1007.25 Eligible lenders.

(a) *In general.* To qualify for a guarantee under this part, a loan shall be made only by a lender meeting qualifications established in this part and approved by HUD, including any lender described in paragraph (b), of this section, except that a loan otherwise insured or guaranteed by an agency of the Federal Government or made by the DHHL from amounts borrowed from the United States shall not be eligible for a guarantee under this part.

(b) *Approval.* The following lenders shall be considered to be lenders that have been approved by HUD:

(1) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act (12 U.S.C.A. 1707 *et seq.*);

(2) Any lender that makes housing loans under chapter 37 of title 38, United States Code, that are automatically guaranteed under section 3702(d) of title 38, United States Code;

(3) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 (42 U.S.C.A. 1441 *et seq.*);

(4) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government; and

(5) Any other lender approved by HUD under this part.

#### § 1007.30 Security for loan.

(a) *In general.* A loan guaranteed under section 184A of the Housing and Community Development Act of 1992 and this part may be secured by any collateral authorized under and not prohibited by Federal or State law and determined by the lender and approved by HUD to be sufficient to cover the amount of the loan. Eligible collateral may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to any restrictions against alienation applicable to Hawaiian Home Lands;

(2) A security interest in non-Hawaiian Home Lands property;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Hawaiian Home Lands property interest as collateral.* If a property interest in Hawaiian Home Lands is used as collateral or security for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under section 184A of the Housing and Community Development Act of 1992 must be on a form approved by both the DHHL and HUD.

(2) *Assumption or sale of leasehold.* The lease form must contain a provision requiring the DHHL's consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by HUD through foreclosure of the guaranteed mortgage or a deed in lieu of foreclosure. A mortgagee other than HUD must obtain the DHHL's consent before obtaining title through a foreclosure sale. The DHHL's consent must be obtained on any subsequent transfer from the purchaser, including HUD, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the

mortgage is guaranteed or held by HUD.

(3) *Liquidation.* The lender or HUD shall only pursue liquidation after offering to transfer the account to another eligible Native Hawaiian family or the DHHL. The lender or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to another eligible Native Hawaiian family or the DHHL.

(4) *Eviction procedures.* Before HUD will guarantee a loan secured by a Hawaiian Home Lands property, the DHHL must notify HUD that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) *Enforcement.* If HUD determines that the DHHL has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans under this part except pursuant to existing commitments.

(ii) *Review.* If HUD ceases issuing guarantees for the DHHL's failure to enforce its eviction procedures, HUD shall notify the DHHL of such action and that the DHHL may, within 30 days after notification of HUD's action, file a written appeal with the Deputy Assistant Secretary, Office of Native American Programs (ONAP). Upon notification of an adverse decision by the Deputy Assistant Secretary, the DHHL has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the DHHL may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration.

[67 FR 40776, June 13, 2002, as amended at 68 FR 66985, Nov. 28, 2003]

#### § 1007.35 Loan terms.

To be eligible for guarantee under this part, the loan shall:

(a) Be made for a term not exceeding 30 years;

(b) Bear interest (exclusive of the guarantee fee under § 1007.55 and service charges, if any) at a rate agreed upon by the borrower and the lender

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and determined by HUD to be reasonable, but not to exceed the rate generally charged in the area (as determined by HUD) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;

(c) Involve a principal obligation not exceeding:

(1) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is \$50,000 or less); or

(2) The amount approved by HUD under this section; and

(d) Involve a payment on account of the property:

(1) In cash or its equivalent; or

(2) Through the value of any improvements, appraised in accordance with generally accepted practices and procedures.

#### § 1007.40 Environmental requirements.

Before HUD issues a commitment to guarantee any loan or (if no commitment is issued) before guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under part 50 of this title. If the loan involves proposed or new construction, HUD will require compliance with procedures similar to those required by § 203.12(b)(2) of this title for FHA mortgage insurance.

#### § 1007.45 Applicability of civil rights statutes.

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) or of the Fair Housing Act (42 U.S.C.A. 3601 *et seq.*) apply to a guarantee provided under this part, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.

#### § 1007.50 Certificate of guarantee.

(a) *Approval process*—(1) *In general.* Before HUD approves any loan for guarantee under this section, the lender shall submit the application for the loan to HUD for examination.

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(2) *Approval.* If HUD approves the application submitted under paragraph (a)(1) of this section, HUD will issue a certificate as evidence of the loan guarantee approved.

(b) *Standard for approval.* HUD may approve a loan for guarantee under this part and issue a certificate under this section only if HUD determines that there is a reasonable prospect of repayment of the loan.

(c) *Effect*—(1) *As evidence.* A certificate of guarantee issued under this part by HUD shall be conclusive and incontestable evidence in the hands of the bearer of the eligibility of the loan for guarantee under this part and the amount of that guarantee.

(2) *Full faith and credit.* The full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by HUD as security for the obligations made by HUD under this section.

(d) *Fraud and misrepresentation.* This section may not be construed:

(1) To preclude HUD from establishing defenses against the original lender based on fraud or material misrepresentation; or

(2) To bar HUD from establishing regulations that are (on the date of issuance or disbursement, whichever is earlier) partial defenses to the amount payable on the guarantee.

#### § 1007.55 Guarantee fee.

The lender shall pay to HUD, at the time of issuance of the guarantee, a fee for the guarantee of loans under this part, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

#### § 1007.60 Liability under guarantee.

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement involved.

#### § 1007.65 Transfer and assumption.

Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by

the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

**§ 1007.70 Disqualification of lenders and civil money penalties.**

(a) *In general*—(1) *Grounds for action.* HUD may take action under paragraph (a)(2) of this section if HUD determines that any lender or holder of a guarantee certificate:

- (i) Has failed:
- (A) To maintain adequate accounting records;
- (B) To service adequately loans guaranteed under this section; or
- (C) To exercise proper credit or underwriting judgment; or
- (ii) Has engaged in practices otherwise detrimental to the interest of a borrower or the United States.

(2) *Actions.* Upon a determination by HUD that any of the grounds for action in paragraph (a)(1)(i), of this section apply to the holder of a guarantee certificate, HUD may:

- (i) Refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;
- (ii) Bar such lender or holder from acquiring additional loans guaranteed under this part; and
- (iii) Require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this part.

(b) *Civil money penalties for intentional violations*—(1) *In general.* HUD may impose a civil monetary penalty on a lender or holder of a guarantee certificate if HUD determines that the holder or lender has intentionally failed:

- (i) To maintain adequate accounting records;
- (ii) To adequately service loans guaranteed under this section; or
- (iii) To exercise proper credit or underwriting judgment.

(2) *Penalties.* A civil monetary penalty imposed under this section shall be imposed in the manner and be in an amount provided under section 536 of the National Housing Act (12 U.S.C.A. 1735f-1) with respect to mortgagees and lenders under that Act.

(c) *Payment on loans made in good faith.* Notwithstanding paragraphs (a) and (b) of this section, if a loan was made in good faith, HUD may not refuse to pay a lender or holder of a valid guarantee on that loan, without regard to whether the lender or holder is barred under this section.

**§ 1007.75 Payment under guarantee.**

(a) *Lender options*—(1) *Notification.* If a borrower on a loan guaranteed under this part defaults on the loan, the holder of the guarantee certificate shall provide written notice of the default to HUD.

(2) *Payment.* Upon providing the notice required under paragraph (a)(1), of this section, the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(i) *Foreclosure.* The holder of the certificate may initiate foreclosure proceedings (after providing written notice of that action to HUD). Upon a final order by the court authorizing foreclosure and submission to HUD of a claim for payment under the guarantee, HUD will pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined under §1007.60) plus reasonable fees and expenses as approved by HUD. HUD's rights will be subrogated to the rights of the holder of the guarantee, who shall assign the obligation and security to HUD.

(ii) *No foreclosure.* Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under paragraph (a)(2)(i) of this section continues for a period in excess of 1 year), the holder of the guarantee may submit to HUD a request to assign the obligation and security interest to HUD in return for payment of the claim under the guarantee. HUD may accept assignment of the loan if HUD determines that the assignment is in the best interest of the United States. Upon assignment, HUD will pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under §1007.60). HUD's rights will be subrogated to the rights of the holder of the guarantee, who

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shall assign the obligation and security to HUD.

(b) *Requirements.* Before any payment under a guarantee is made under paragraph (a) of this section, the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidenc-

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ing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. HUD will then take such action to collect as HUD determines to be appropriate.

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